

REMARKS

Claims 1-60 are pending. Claims 1-60 would be allowed if a Terminal Disclaimer were filed. *See*, Office Action, page 3.

Provisional Obviousness-Type Double Patenting Rejection

Claims 1-60 have been provisionally rejected for obviousness-type double patenting over claims 1-39 and 41-48 of U.S. Application No. 10/736,043 (now U.S. Patent No. 7,270,830). The Examiner states that although the conflicting claims are not identical, they are also not patentably distinct.

The instant application and the '830 patent are commonly owned by Purdue Pharma L.P. (assignments recorded at reel/frames 020023/0891 and 019687/0221, respectively). Thus, in view of the Terminal Disclaimer filed herewith, this rejection should be withdrawn. The Applicant notes that the filing of a Terminal Disclaimer is not an admission, acquiescence or estoppel on the merits of an issue of obviousness. *See Quad Environment Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 873-74, 20 U.S.P.Q. 2d 1392, 1394-95 (Fed. Cir. 1991).

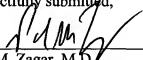
Conclusion

In view of these amendments and remarks, it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining, which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

Dated: January 31, 2008

Respectfully submitted,

By 
Paul M. Zagar, M.D.

Registration No. 52,392
DARBY & DARBY P.C.
P.O. Box 770
Church Street Station
New York, New York 10008-0770
(212) 527-7700
(212) 527-7701 (Fax)
Attorneys/Agents For Applicant